PIC PROPERTY LTD

v.

SING ENG PTE. LTD.

HIGH COURT, SINGAPORE
CHAO HICK TIN JC
[ORIGINATING SUMMONS NO. 1221 OF 1987]
30 JULY 1988

COMPANY LAW: *Charge on shares - Blank instruments of transfer executed - Notice given - Shares transferred - Whether person entitled to transfer - Compliance with articles of association - Right or title to transfer of shares not disputed - Rectification of register allowed.*

This was an application made under s. 130 and s. 194 of the Companies Act to rectify the register of shareholders of Sing Eng (Private) Ltd. and for an order that the defendants do deliver to the plaintiffs new share certificates in the name of the plaintiff's nominee. Both Lie Mo Meng and Lie Mo Kwang are directors of the defendant-company owning 514,390 shares each. They had executed separate guarantee and memorandum of charge on shares they owned which the shares were charged in favour of Xiamon International Bank (XIB). On 21 April 1987 both executed a blank instrument of transfer which they delivered to XIB. By a letter dated 9 May 1987, M/s Shook Lin & Bok (SLB) forwarded to the defendant-company the relevant share certificates and 2 transfer forms, duly completed in favour of XIB Nominees Ltd. No reply was given. Subsequently, SLB gave notice and as no response was given, the shares were sold to the plaintiffs. The defendant-company was asked to issue new share certificates in favour of XIB Nominees. By a letter dated 25 August 1987, the solicitors for the defendant-company wrote refusing the request to have two share transfers registered in the names of PIC Property Limited or its nominees.

Held:

[1] The defendant-company had failed to reply to the lodgement of transfer in favour of XIB Nominees within the stipulated period required under s. 128 (1) and (2) of the Companies Act by sending out the appropriate notice of refusal. Therefore, they were in breach of the provisions of the Companies Act.

[2] Article 33 of the articles of association does not restrict the right to transfer the shares to another member of the defendant-company but however transfer to a non-member is possible only if there is no existing member wishing to purchase the shares. Such transfer must be preceded by a written notice to the defendant-company as required by Article 34.

[3] Article 34 referred to 'a person proposing to transfer any share' must be read together with Article 33 which provides that 'a share may be transferred by a member or other person entitled to transfer'. XIB is clearly a person entitled to transfer under the guarantee and memoranda and had given the requisite notice. The defendant-company had given a reply which was clearly too late.

[4] There is no dispute of title raised. Issues before the Court were speculative and without any foundation. Court should exercise its summary jurisdiction under s. 194 (1) of the Companies Act in ordering rectification.

[Application granted with costs to plaintiff. Share certificates to be delivered within 14 days hereof.]

Cases referred to:
Harrold v. Plenty [1907] 2 Ch 314
Stubbs v. Slater [1910] 1 Ch 632
Re Copal Varnish Co Ltd. [1917] 2 Ch 349
Re Hackney Pavilion Ltd [1924] 1 Ch 276
Hunter v. Hunter [1936] AC 222
Re Diamond Rock Boring Co. Ltd. Ex parte A.R. Shaw [1877] 2 QBD 463

Legislation referred to:
Companies Act (Cap 50) [Sing] ss. 128, 130, 194

JUDGMENT

Chao Hick Tin JC:

This was an application made under ss. 130 and 194 of the Companies Act to rectify the register of shareholders of Sing Eng (Private) Ltd, the defendants herein, and for an order that the defendants do deliver to the plaintiffs new share certificates in the name of the plaintiffs' nominee. The defendants were a private limited company, incorporated in Singapore (hereinafter called "the defendant-company") with an authorized capital of $2.5 million of which $1,984,278 was paid up.

One Lie Mo Meng, (also known as Lie Moeng Kieng) was the owner of 514,930 shares in the capital of the defendant-company. Pursuant to a guarantee and a memorandum of charge on stocks and shares, both dated 16 March 1986 (hereafter called "first guarantee" and "first memorandum") and for the consideration therein stated, Lie Mo Meng charged, *inter alia*, the said 514,930 shares in favour of Xiamen International Bank (XIB) and also deposited the relevant share certificate with XIB.

Another person, one Lie Mo Kwang (also known as George M K Lee) was the owner of another 514,930 shares in the defendant-company. Pursuant to a guarantee and a memorandum of charge of stocks and shares, both dated 21 March 1986 (hereafter called "second guarantee" and "second memorandum") and for the consideration therein mentioned, Lie Mo Kwang charged, *inter alia*, the said 514,930 shares in favour of XIB and also deposited the relevant share certificate with XIB.

Both Lie Mo Meng and Lie Mo Kwang were also directors of the defendant-company.

On 21 April 1987, both executed, pursuant to the first and second memoranda, a blank instrument of transfer which they delivered to XIB. By a letter dated 9 May 1987, Messrs Shook Lin & Bok (SLB) forwarded to the defendant-company the relevant share certificates and the two transfer forms, duly completed in favour of XIB Nominees Ltd. This letter of 9 May 1987 from SBL was as follows:

> We refer to the Circular Resolution of the board of directors approving the transfer of 1,029,860 shares to XIB Nominees Ltd. We now forward herewith:
>
> 1. the 2 share transfers duly signed by Messrs Lie Mo Kwang and Lie Moeng Kieng and stamped;
> 2. original share certificates nos 22 and 23 for 514,930 shares each.
>
> Please let us have the Shares Certificates in favour of XIB Nominees Ltd as soon as possible.

No reply was given by the defendant-company to the letter of 9 May 1987. On 22 June 1987, SLB, acting on behalf of XIB and without prejudice to the letter of 9 May 1987, gave notice to the defendant-company, pursuant to Article 34 of the articles of association of the

defendant-company that XIB wished to transfer the said shares. This notice was given by XIB as a person entitled to transfer pursuant to the authority given to XIB by the owners of the shares. For this purpose, XIB constituted the defendant-company as their agents for the sale of the shares to any member of the defendant-company. The defendant-company did not respond within 14 days as required under Article 35. On 20 August 1987, SLB, on behalf of XIB, notified the defendant-company that XIB had sold the shares of PIC Property Ltd, the plaintiffs herein. The defendant-company was requested to issue the new share certificates in favour XIB Nominees.

It was only on 25 August 1987 that the solicitors for the defendant-company, Messrs Jing Quee Chin Joo & Teck Hui, replied to SLB in these terms:

> We act for Sin Eng (Private) Ltd and refer to your letter of 20 August 1987 to our clients.
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> We are instructed by our clients that the shares comprised in the two transfers delivered by you to our clients (are) registered in the names of Lie Mo Kwang and Lie Mo Meng respectively. Xiamen International Bank or XIB (Nominees) Limited never was the registered proprietor of any part of the said shares. In the circumstances, our clients are unable to consider your request to have the 2 share transfers registered in the names of PIC Property Limited or its nominees.

The foregoing were the pertinent facts. Mr. Tan Jing Quee for the defendants, raised the following two points in his written skeletal arguments. First, which was basically the same point as contained in the letter of 25 August 1987, that XIB was not entitled to give notice to the defendant-company under Article 34. Second, as there were issues relating to the title of the shares and as the guarantees and the memoranda were executed in and subject to the law of Hong Kong, these issues should be determined by the Court in Hong Kong and this Court should decline to exercise its jurisdiction under s. 194. The defendants submitted that the proper procedure should be by way of a prior action against Lie Mo Meng and Lie Mo Kwang for a declaration directing both of them to give notice to the defendant-company to transfer the shares to XIB.

Let me first set out the relevant statutory provisions in the Companies Act which govern this matter:

> Section 128(1) - If a company refuses to register a transfer of any shares, debentures or other interests in the company it shall, within one month after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.
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> (2) - Where an application is made to a company for a person to be registered as a member in respect of shares which have been transferred or transmitted to him by act of parties or operation of law, the company shall not refuse registration by virtue of any discretion in that behalf conferred by the articles unless it has served on the applicant,within one month beginning with the day on which the application made, a notice in writing stating the facts which are considered to justify refusal in the exercise of that discretion.
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> Section 130(1) - Every company shall... was within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the company, complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.
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> (3) - If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company

and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any office of the company in default in such proportions as the Court thinks fit.

Section 194(1)- If:

(a) the name of any person is without sufficient cause entered in or omitted from the register; or

(b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member, the person aggrieved or any member or the company may apply to the Court for rectification of the register and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

(2) - On any application under subsection(1), the Court may decide:

(a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and

(b) generally, any question necessary or expedient to be decided for the rectification of the register.

I should also at this point refer to the articles of association of the company which were pertinent to the matter in hand:

(33) A share may be transferred **by a member or other person entitled to transfer** (hereinafter called "the transferor") to any member selected by the transferor; but no share shall be transferred to a person who is not a member so long as any member (or any person selected by the directors as one whom it is desirable in the interests of the company to admit to membership) is willing to purchase the same at the fair value.
(Emphasis added).

(34) Except where the transfer is made pursuant to Arts. 33, 36 and 43 hereof, **a person proposing to transfer any share** (hereinafter called the proposing transferor) shall give notice in writing (hereinafter called the transfer notice) to the company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the company his agent for the sale of the share to any member of the company at the price so fixed or at the option of the purchaser, at the fair value to be fixed by the auditors of the company. The transfer notice shall not be revocable except with the sanction of the directors. (Emphasis added).

(35) If the company shall within the space of 14 days after being served with such notice find a member (hereinafter called the purchasing member) willing to purchase the share and shall give notice to the proposing transferor, he shall be bound, upon payment of fair value, to transfer to the purchasing member.

(36) If the company shall not within the space of 14 days aforesaid find a member willing to purchase the share and give notice in manner aforesaid, the proposing transferor shall at any time within 2 months afterwards be at liberty to sell and transfer the share to any person at any price.

In this case, as indicated above, both Lie Mo Meng and Lie Mo Kwang had delivered the relevant share certificates to XIB together with duly executed blank transfer forms. Apart from the rights of XIB under the guarantees and the memoranda, clearly this arrangement amounted to an equitable mortgage: see *Harrold v. Plenty* [1907] 2 Ch 314. XIB could exercise

the power of sale in the event of default by Lie Mo Meng and Lie Mo Kwang without having to apply to the Court for an order for sale; *Stubbs v. Slater* [1910] 1 Ch 632. More importantly, it should be noted that neither person questioned the right of XIB to have the shares sold or transferred.

It is settled law that unless the articles of company otherwise provide, a shareholder has a free right to transfer his shares to whom he will: see *Re Copal Varnish Co Ltd.* [1917] 2 Ch 349. A transferee under a valid transfer has an absolute right to be registered unless there is power reposed in the company in its articles to refuse to register and the company has effectively so refused: see *Re Hackney Pavilion Ltd* [1924] 1 Ch 276.

When SLB forwarded the duly executed transfer forms and the share certificates to the defendant-company on 9 May 1987, it was on the understanding that the board of directors had by circulation approved the transfer. But that understanding would appear to be erroneous. Nevertheless, at no time did the defendant-company reply to that lodgement of transfer. The defendant-company had failed, within the period of one month, as required under s. 128(1) and (2) of the Act, to send out the appropriate notice of refusal. The defendant-company was therefore clearly in breach of those provisions of the Companies Act.

Be that as it may, the arguments before me centred on the restrictions on transfer imposed in the articles of association, which I will now turn to. Under Article 33 it was clear that there was no restriction on the right of transfer of shares to another member of the defendant-company. Transfer to a non-member was only possible if no existing member wished to purchase the relevant shares at a fair value. Such a transfer to a non-member must be preceded by a written notice to the defendant-company, which notice should specify what was the fair value for the shares and contain the additional particulars set out in Article 34. The defendant-company must within 14 days find a member who was willing to buy the shares failing which the shares could be transferred to any non-member.

As I understood it the argument of the defendant-company was that as XIB was not the registered owner of the shares and was not a member, it was not entitled to give a transfer notice to the defendant-company under Article 34. But this argument ignored the fact that Article 34 referred to "a person proposing to transfer any share" not to a "**member**". I was of the view that Article 34 should be read with Article 33, which provides that "a share may be transferred by a member or **other person entitled to transfer**". Under the guarantees and the memoranda, and indeed under general law, XIB was clearly a person "entitled to transfer". Accordingly, on 22 June 1987, XIB, as a person entitled to transfer, gave the requisite written notice to the defendant company. Here I would repeat my earlier comment that this right to transfer had not been questioned by either Lie Mo Meng or Lie Mo Kwang. As no response was given by the defendant-company within 14 days that a member was willing to buy the shares, XIB was therefore entitled to transfer the shares to whomsoever it wished within a period of two months of the date of the notice. On 20 August 1987, XIB asked the defendant-company to issue the new share certificates in favour of XIB Nominees Ltd. The reply on 25 August 1987 by M/s Jing Quee Chin Joo & Teck Hui, on behalf of the defendant-company, was clearly too late.

In support of the contention that XIB was not entitled to give the transfer notice under Article 34, Counsel for the defendant-company referred to the case *Hunter v. Hunter* [1936] AC 222. But there were clearly significant differences between the relevant articles in the *Hunter's* case and the articles in the present case. In *Hunter*, the relevant Article 17 provided that:

17. No member shall be entitled to transfer any share otherwise than in accordance with the following provision - *a*

(a) A member desirous of selling his shares... shall give notice... to the secretary of the company containing an offer to sell the same...

Viscount Hailsham L.C. in his judgment at p. 248 stated:

I am satisfied... that the steps taken to put the nominees of the bank on the register were not in accordance with the terms of the article. This construction does not prevent a mortgage of the shares or their sale by the mortgagees in default of payment of the mortgage debt. But the sale must be effected in accordance with the terms of the article. The bank could have taken from the plaintiff letters addressed to the auditors and to the secretary respectively in blank, or they could have taken a power of attorney from the plaintiff to write such letters in his name and on his behalf... *b* *c*

In my judgment, *Hunter* was decided on the basis of the provision of the article there in question. I did not think it was of assistance to the defendant-company here. In *Hunter* the notice must be given by a member, not so in the present case. For the reasons which I have given above, I rejected the argument of the defendant-company that XIB was not entitled to give the transfer notice under Article 34.

Turning now to the second main point of the defendant-company, I would like to emphasise again that neither Lie Mo Meng nor Lie Mo Kwang questioned the right or title of XIB to transfer the shares. The defendant-company had not tendered any evidence to show that the right or title of XIB was being challenged. All I had before me were just speculative issues raised by Counsel for the defendant-company without any foundation whatsoever. Further, I did not see what difference it made that the guarantees and memoranda were executed in Hong Kong. No evidence was placed before me that the governing law in Hong Kong was different from Singapore. *d* *e*

The defendant-company must comply with its own articles of association. It must act fairly in a situation like this. Included in the defendants' bundle of authorities was the case *Re Diamond Rock Boring Co. Ltd. Ex parte A.R. Shaw* [1877] 2 QBD 463. In reliance on this case, Counsel for the defendant-company urged this Court not to exercise its summary jurisdiction under s. 194(1) in ordering rectification of the register. I did not see how this case could assist the defendant-company. On the contrary it reinforced my view that I should grant the orders prayed for. Putting it very briefly, in *Ex Parte Shaw*, one Shaw through an agent Smith purchased shares belonging to one Piers. Smith acted as agent for both parties. Shaw paid the purchase price to Smith. In the meantime Piers executed a transfer and forwarded it together with the script to the secretary of the company. The secretary wrote upon the transfer the words''certificates lodged at company's office" and returned it to Piers. The script was retained by the company. Piers forwarded the transfer to Shaw through Smith. Shaw executed the transfer and returned it to Smith so that Smith could get Shaw's name put upon the list of shareholders. Smith absconded and did not pay over the sale price to Piers and neither did he forward the transfer to the company for registration. Shaw demanded that the company put his name on the register which the company refused. On Shaw's application to Court to rectify the register, Piers opposed the application. The company appeared but offered no opposition. The application of Shaw was granted. Lord Coleridge CJ sitting in the Court of Appeal said at p. 479: *f* *g* *h*

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> I think that the legislation intended to give the Court jurisdiction to make an order so as to decide questions of title, trusting to the discretion of the Court not to decide in this summary manner any intricate or difficult question of title; but that, if the Court think fit, they have jurisdiction to make the order in all cases.

Brett LJ also stated the following at p. 484:

> No doubt, as a matter of judicial discretion, when there is a real dispute, and the amount depending is large, or if the facts are complicated, or any general principle is involved, the Court, instead of proceeding in this summary manner at once, should direct an issue or some other proceeding.

In the instant case, no dispute of title was raised by either Lie Mo Meng or Lie Mo Kwang. Fictitious issues were unnecessarily raised by the defendant-company. In my view there was clearly no merit in the second point of the defendant-company.

Accordingly, I granted the orders prayed for by the plaintiffs, with the modification that the new share certificates be delivered within fourteen days thereof. I awarded costs to the plaintiffs.

Also found at [1989] 1 CLJ 81